

[via e-mail]

August 17, 2020

Michael J. Pfeiffer  
SVP, Technical Services  
International Code Council  
Central Regional Office  
4051 Flossmoor Road  
Country Club Hills, IL 60478

Dear Mr. Pfeiffer,

The Energy Efficient Codes Coalition (EECC) supports the efforts of the ICC Board of Directors and staff to ensure a fair, transparent, and inclusive code development process (CDP). We strongly believe that the proceedings that produced the 2021 IECC reflect the high quality of that process.

EECC is a program housed and administered by the Institute for Market Transformation. Our supporters include, among others, organizations from government, labor, faith-based groups, broad-based energy efficiency advocates, regional energy efficiency alliances, academia, think-tanks, affordable housing advocates, architects, business, environmental groups and utilities. While EECC supporters do not necessarily agree on all aspects of individual code proposals, they all favor a steady increase in energy efficiency in the IECC.

Outside the narrow confines of these appeals, the results of the 2019 OGCV have been very favorably received. ICC's Governmental Members have produced a 2021 model code that – using readily available technologies – will boost both the efficiency of residential and commercial buildings by roughly 10% over its 2018 predecessor model code. Naturally, as is the case with any process, however, a few stakeholders are unhappy with the voting results, exclusively on proposals they did not support.

### **Energy Efficient Codes Coalition (EECC) Statement of Interest in Matter Being Appealed**

On behalf of the Energy Efficient Codes Coalition (EECC), we would like to thank you for the opportunity to submit a response to the appeals raised regarding the 2019 Group B Code Changes as they related to the International Energy Conservation Code. Below you will find our Statement of Interest as well as our response to the appeals submitted by AGA/APGA, AHRI, and NAHB and LBA organized in accordance with their respective hearing dates as laid out in the Notice of Appeal Hearings dated July 30, 2020.

Because supporters of EECC authored the proposals under consideration for the hearings scheduled on August 31st and September 3rd, we request permission to participate in both of these hearings.

Unless the Appellants can successfully show that both “material and significant” procedural irregularities occurred, all of the remedies they propose become completely irrelevant and need not even be

considered by the Appeals Board. As a result, we urge the Appeals Board to take up and resolve Appellants' claims of procedural irregularities first, without entertaining any proposed remedies.

## **No Need for the Appeals Board to Act on Any of the Appeals**

Simply stated, none of the IECC appeals below present an appealable issue, nor do any of the appeals make a case for "material and significant irregularities" of ICC process or procedure (and in fact, the ICC staff, an independent audit, the Validation Committee and the Board have already examined and unanimously rejected many of the appellants claims in a comprehensive report). There is no need for the Appeals Board to give weight to any of these appeals.

Sections 6.3.7 and 6.3.8 of CP1 Appeals establish a clear scope for decisions of the Appeals Board:

*6.3.7 Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters.*

*6.3.8 In order to sustain the appeal, or any part thereof, the Appeals Board must find that there was a material and significant irregularity of process or procedure.*

Rather than identifying actual appealable issues of process or procedure, the appeals pass judgement on the ICC consensus process and the qualifications of the voters who participated in it. An unprecedented number of new Governmental Members invested their time and resources in the Code Development Process for the first time and cast their votes in the public interest. The participation of Governmental Members is a core strength of the ICC Code Development Process; overturning results is an extreme remedy and should be reserved for only significant procedural deficiencies.

Based on the points discussed, the Appeals Board should conclude that there are no legitimate appealable issues presented by the appellants.

*If the Appeals Board does decide to hear specific issues in the appeals, all should be rejected for the reasons outlined below:*

## **Appeals Hearing, August 31, 2020: Federal Preemption (RE107 and RE126) – AGA, APGA, AHRI, and NAHB**

**(Response to NAHB Item 2) The question of whether RE126 violates the Federal preemption statutes of NAECA or not is a legal matter that should be determined by adopting jurisdictions and the courts.**

While EECC defers to the proponents of RE126, we note that NAHB's appeal does not identify an irregularity of process or procedure, but instead asks the Appeals Board to make a judgment as to legal prospects of a code provision if a jurisdiction were to adopt it. This legal claim is clearly outside the scope of a CP1 Appeal. The impact of national and state laws on code change proposals is a technical aspect of a code change proposal that is routinely debated (and was debated at length on RE126). Ultimately, the legality of any code provision will be determined by adopting jurisdictions and the courts. The Appeals Board should not dive into this substantive debate on RE126 nor substitute its own legal ruling on this proposal.

**It should be noted that even if parts of an I-Code are declared to violate a federal statute's preemption requirements, the IECC itself states that it would "not affect the validity of the remainder of the I-Code."**

## **Appeals Hearing, September 3, 2020: Scope and Intent (RE147 and CE217 - I & II) – AGA, APGA, LBA, and NAHB**

### **(Response to NAHB Item 1) The question of whether RE147 and CE217 meet NAHB’s view of the intent of the International Energy Conservation Code is not grounds for an appeal.**

EECC defers to the proponents of RE147 and CE217, but again we note that NAHB’s appeal does not identify an irregularity of process or procedure, but rather, claims that electric vehicle charging provisions do not impact the “effective use and conservation of energy,” and argues that these requirements belong elsewhere in the I-Codes. This is outside the scope of an appeal under CP1 because it addresses the substance of the proposals. IECC Section R101.3 (which defines the IECC’s Intent) is not a permanent, unchanging feature; It is a substantive code provision that has been debated and modified by ICC GMVRs in recent code update cycles. The question of whether RE147 and CE217 (Parts I and II) fit within the “intent” of the IECC was discussed at the Public Comment Hearing, and that issue was presumably resolved when GMVRs approved both RE147 and CE217 (Parts I and II) and voted on several other proposals to modify Section R101.3. Whether a proposal fits within NAHB’s view of the intent of the IECC – *like any other substantive argument* – is not grounds for an appeal.

Thank you very much for your consideration of our response in this matter, and we look forward to presenting our position at the hearings starting August 31<sup>st</sup>.

Sincerely,

Amy Boyce, Executive Director  
Bill Fay, Coalition Director  
Energy Efficient Codes Coalition  
1707 L St NW, Suite 1050  
Washington, DC 20036